BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Petition of Hutchinson Telecommunications, Inc. for Arbitration with Embarq Minnesota, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act	MPUC Docket No. P-421,5561,430/IC-14-189 OAH Docket No. 48-2500-31383

HUTCHINSON TELECOMMUNICATIONS, INC.'S POST HEARING REPLY BRIEF

TABLE OF CONTENTS

INTRODUCTION 1

DISCUSSION 2

I. CenturyLink EQ's Attempts To Restrict HTI's Ability To Select A Point Of Interconnection That Best Meets Its Needs Violate The Telecommunications Act And Its Implementing Regulations 2

A. Under The Telecommunications Act, Technical Feasibility is the Only Permissible Limit on the CLEC's Choice of the Manner and Location of Interconnection 2

B. HTI Is Entitled To A Meet Point Interconnection Arrangement 4

C. HTI Is Entitled to Interconnection at Any Technically Feasible Point Within CenturyLink EQ's Network 5

II. CenturyLink EQ's Attempts To Impose New Reciprocal Compensation Charges On HTI Violates The FCC's CAF Order 7

A. The CAF Order Prohibits Any Increase in Reciprocal Compensation Charges 7

B. HTI's Proposed Language Will Not Impose Any Undue Costs on CenturyLink EQ 10

III. CenturyLink EQ's Proposed BFR Process is Overly Broad and Will Impose Unnecessary Costs and Delay 11

IV. CenturyLink EQ's Failure to Negotiate In Good Faith 12

V. Miscellaneous Issues 14

CONCLUSION 14

INTRODUCTION

Hutchinson Telecommunications, Inc. ("HTI") respectfully submits this post hearing brief in support of its petition for arbitration, pursuant to the federal Telecommunications Act of 1996[1] and Minnesota state law,[2] of an interconnection agreement with Embarq Minnesota, d/b/a CenturyLink ("CenturyLink EQ").

Based upon their respective post hearing briefs, it appears that HTI and CenturyLink EQ agree that the most important issues remaining in dispute concern: 1) a dispute regarding the location of the Point of Interconnection and HTI's request for a meet point interconnection arrangement, including contract language that would expressly recognize the parties' current meet point interconnection; 2) reciprocal compensation, and more specifically, CenturyLink EQ's desire to begin charging HTI for transport on CenturyLink EQ's side of the point of interconnection; and 3) CenturyLink EQ's proposed Bona Fide Request ("BFR") process. On October 30, 2014, the Minnesota Department of Commerce ("DOC" or "Department") filed its post hearing brief in this matter. The Department's brief strongly supports HTI's positions. To that end, the Department has recommended the adoption of HTI's proposed language on all of the most significant issues. Indeed, the Department has not recommended the adoption of the CenturyLink EQ language on any issue. The views of the public agency specifically charged with advocating on behalf of the public interest should be given substantial weight in the determination of the disputed issues in this case.

[1] 47 U.S.C. § 252(b).
[2] Minn. Stat. § 216A.05; Minn. R. part 7812.1700.

DISCUSSION

I. CenturyLink EQ's Attempts To Restrict HTI's Ability To Select A Point Of Interconnection That Best Meets Its Needs Violate The Telecommunications Act And Its Implementing Regulations

A. Under The Telecommunications Act, Technical Feasibility is the Only Permissible Limit on the CLEC's Choice of the Manner and Location of Interconnection

As discussed in some detail in HTI's opening brief, the Telecommunications Act expressly permits a CLEC to interconnect at any technically feasible point.[3] The language of the statute is intentionally broad and provides a CLEC with wide latitude to select a Point of Interconnection that best meets its needs. Cost may not be used as a factor. What the ILEC considers to be "standard" may not be used as a factor. The ILEC does not have the right to veto the CLEC's choice of a POI. The *only* limitation permitted by the Telecommunications Act is technical feasibility. Further, a CLEC is entitled to a single POI per LATA. An ILEC may not require a CLEC to interconnect at a POI that it has not requested. CenturyLink EQ's insistence that HTI must interconnect at its tandem and at the Osseo host switch must be rejected as contrary to the Act.

The parties agree that HTI's proposed language does not present any issue of technical feasibility. Indeed, the specific interconnection proposals that HTI has made and that CenturyLink EQ has rejected are for interconnection: 1) at the St. Cloud Qwest tandem where HTI and CenturyLink EQ are currently interconnected and have been for many years; 2) at the Glencoe remote switch where HTI's ILEC affiliate is interconnected with CenturyLink EQ. For obvious reasons, CenturyLink EQ cannot

[3] Post Hearing Brief of Hutchinson Telecommunications, pp. 6-14.

claim that these existing meet point interconnection arrangements are not technically feasible.[4] CenturyLink EQ's position regarding the POI location is motivated entirely by its desire to begin charging HTI reciprocal compensation charges -- specifically, for dedicated transport on CenturyLink EQ's side of the POI.[5]

CenturyLink EQ argues that a meet point location must be agreed upon by the interconnection carriers, citing the definition of meet point found in the FCC's regulations.[6] CenturyLink EQ is misapplying the regulation. In urging that CenturyLink EQ's legal interpretation be rejected, the Department of Commerce stated:

> CenturyLink appears to argue that, because the definition of "meet point" refers to a point "designated" by carriers, State commissions may not in arbitration require meet point interconnection at any otherwise technically feasible point used by other carriers. CenturyLink EQ cites no authority for this theory, and the Department has found none. CenturyLink EQ's argument appears plainly inconsistent with the Act, which makes technical feasibility the cornerstone of the obligation to interconnect, and which requires parity and prohibits unreasonable discrimination. The Commission should not adopt this novel interpretation.[7]

As HTI's witness, Mr. Burns, explained, the reference to a meet point being "designated by two telecommunications carriers" reflects nothing more than a recognition that a meet point interconnection necessarily requires cooperation between the interconnection carriers.[8] This becomes particularly relevant in a greenfield

[4] See Initial Post Hearing Brief of the Department of Commerce, p. 4 ("In this case, CenturyLink should be required to provide the interconnection arrangement HTI requested at the Glencoe and St. Cloud locations. CenturyLink admits that the interconnection arrangements requested by HTI in both locations are technically feasible.")
[5] See Post Hearing Brief of Embarq Minnesota, p. 9, fn. 23 ("CenturyLink believes the heart of the dispute related to transport costs.")
[6] *See* Post Hearing Brief of Embarq Minnesota, p. 5.
[7] Initial Post Hearing Brief of the Department of Commerce, p. 13.
[8] Hearing Ex. 101 (Burns Public Rebuttal), p. 9, lines 4-17.

environment where the parties are placing new facilities.[9] Here, HTI is seeking to interconnect to existing facilities. The language that CenturyLink EQ relies on does not trump the ILEC's statutory obligation to allow a CLEC to interconnect at any technically feasible point. To accept CenturyLink EQ's legal argument would effectively give the ILEC veto power over the POI location, contrary to the clear language of Section 251(c)(2) of the Telecommunications Act.[10]

B. HTI Is Entitled To A Meet Point Interconnection Arrangement

Meet point interconnection has been expressly recognized by the FCC as a technically feasible method of interconnection.[11] HTI has proposed including in the interconnection agreement a definition of Meet Point Interconnection Arrangement that mirrors the definition found in the FCC's rules. CenturyLink EQ would eliminate any definition of "Meet Point Interconnection Arrangement" and, instead, include only one specific type of meet point interconnection – Mid Span Fiber Meet – in the interconnection agreement. In support of this position, CenturyLink EQ argues that a Mid Span Fiber Meet is CenturyLink's "standard" meet point option. There is no legal basis for limiting HTI's interconnection options in this manner.

CenturyLink EQ also argues, incorrectly, that "HTI proposes to eliminate the term Mid Span Fiber Meet and instead use the more generic term 'meet point.'"[12] In fact, HTI has proposed definitions of both "Meet Point Interconnection Arrangement"

[9] Transcript, p. 26, line 23 – p. 28, line 6; p. 32, lines 1-17.
[10] *See also Local Competition Order*, ¶ 1373 ("[O]ur rules permit the party requesting interconnection which may be a small entity, and not the incumbent LEC to decide the points that are necessary to compete effectively.")
[11] *Local Competition Order*, ¶ 553.
[12] Post Hearing Brief of Embarq Minnesota, p. 5.

and "Mid Span Fiber Meet."[13] The key difference between the two definitions of "Mid Span Fiber Meet" proposed by the parties is that HTI's proposed definition makes clear that a Mid Span Fiber Meet is only one form of Meet Point Interconnection Arrangement that is available under the interconnection agreement. CenturyLink EQ's attempt to limit meet point interconnection to one specific type that it regards as "standard" is not permitted by the Act.

C. HTI Is Entitled to Interconnection at Any Technically Feasible Point Within CenturyLink EQ's Network

The Telecommunications Act unambiguously provides that an ILEC must permit interconnection at any technically feasible point *within the ILEC's network*. CenturyLink EQ acknowledges that its network is anywhere where it has facilities.[14] Nevertheless, CenturyLink EQ seeks to narrow its interconnection obligation by requiring that HTI interconnect within CenturyLink EQ's "service territory."[15] CenturyLink EQ's service territory is not the same as its network. CenturyLink EQ's position must be rejected as contrary to the plain language of the Telecommunications Act.

As legal support for its argument, CenturyLink EQ points to the definition of "Incumbent local exchange carrier."[16] This definition is used to determine whether a carrier is subject to the interconnection obligations of Section 251(c)(2) of the Act. It does not address where the POI may be located.[17] That is addressed by a different section of

[13] Hearing Transcript (Easton) at p. 64, line 2-17.
[14] Hearing Transcript (Easton), p. 64, lines 2-17.
[15] Post Hearing Brief of Embarq Minnesota, p. 7.
[16] *See* 47 U.S.C. § 251(h).
[17] 47 U.S.C. §251(c) ("In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties . . . .")

the Act, Section 251(c), which is the Section that supports HTI's proposed language. There is no dispute here regarding CenturyLink EQ's status as an incumbent local exchange carrier. Thus, the interconnection obligations set forth in Section 251(c)(2), including the obligation to permit interconnection at any technically feasible point within the CenturyLink EQ, are triggered.

HTI has proposed language that would facilitate interconnection by requiring CenturyLink EQ to disclose certain information regarding locations where it has established interconnection arrangements with other parties. CenturyLink EQ argues that a CLEC is only entitled to this kind of information to the extent necessary to serve a particular customer.[18] To support this argument, CenturyLink EQ selectively quotes from the *Local Competition Order*, omitting the language that makes clear that obtaining information necessary to make a determination about which network elements to request to serve a particular customer is identified by the FCC *as an example* of the kind of information that an ILEC is required to share with a CLEC.[19] The paragraph that CenturyLink EQ cites says nothing about limiting the CLEC's access to network information.

More on point is the following, from Paragraph 205 of the Local Competition Order:

> Incumbent LECs possess the information necessary to assess the technical feasibility of interconnecting to particular LEC facilities. Further,

[18] Post Hearing Brief of Embarq Minnesota, p. 18.
[19] Local Competition Order, ¶155 ("It would be reasonable, *for example,* for a requesting carrier to seek an obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer.") (emphasis added).

> incumbent LECs have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities. Without access to such information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects.

Although HTI quoted this provision in its opening brief, CenturyLink EQ does not mention it. As discussed in HTI's opening brief, the evidence in this case demonstrates the value of receiving this type of information.[20] CenturyLink's contention that it should not be required to disclose points of interconnection that it has with other carriers because that information is unnecessary should be rejected. CenturyLink is not in a position to judge for HTI what information is necessary.

II. CenturyLink EQ's Attempts To Impose New Reciprocal Compensation Charges On HTI Violates The FCC's *CAF Order*

A. The *CAF Order* Prohibits Any Increase in Reciprocal Compensation Charges

As discussed in HTI's opening brief, the FCC, in its *CAF Order*, froze all reciprocal compensation for transport and termination, providing that "[N]o telecommunications carrier may increase a Non-Access Reciprocal Compensation for transport or termination above the level in effect on December 29, 2011."[21] The dedicated transport charges that CenturyLink EQ is now seeking to impose are reciprocal compensation charges prohibited by the *CAF Order*.[22] Because CenturyLink EQ does not charge for dedicated transport under the parties' current agreement, the *CAF Order* prohibits it from imposing these charges now.

[20] *See* Post Hearing Brief of Hutchinson Telecommunications, pp. 12-13.
[21] *CAF Order* ¶ 74.
[22] *See* 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701(c).

CenturyLink EQ argues that the parties' current agreement distinguishes "between Bill and Keep and Transport."[23] CenturyLink EQ is misreading the parties' agreement. As CenturyLink EQ notes, Section 36.1.2 provides that "Each party is responsible for any necessary transport on its side of the POI as described in Appendix 2." In other words, under the parties' current agreement, each party receives its transport costs from its own customers, rather than from the other party. This is the definition of bill and keep.[24]

CenturyLink EQ contends that "Dedicated transport, such as flat rated direct trunked transport, is not included in the Bill and Keep ordered by the FCC in the *CAF Order*.[25] Contrary to that contention, the *CAF Order* provides that **all** reciprocal compensation rates – which includes both transport (i.e., flat rated charges) and termination (i.e., usage based charges) – are frozen as of the effective date of the Order. Although the FCC deferred a decision on a specific transition plan for certain reciprocal compensation elements, such as dedicated transport,[26] it did not exclude those elements from the rate freeze. The Department agrees with HTI's interpretation:

> The paragraphs of the *CAF-ICC Order* to which CenturyLink EQ point, clearly discuss FCC's intent to further develop the "glide path" toward bill-and-keep for elements *not specifically identified in the initial transition*, and there is nothing to indicate that the FCC intended to exclude dedicated transport rates from either the caps imposed by its rule or from

[23] Post Hearing Brief of Embarq Minnesota, p. 16.
[24] *See CAF Order* ¶ 737; Hearing Ex. 200 (Doherty Direct), Exhibit KAD-1 (CenturyLink EQ response to HTI Information Request No. 4, acknowledging that "the current traffic exchange agreement does not contain any provisions for compensation between the companies and therefore would be properly characterized as 'bill and keep' as that term has been defined by HTI.").
[25] Post Hearing Brief of Embarq Minnesota, p. 15.
[26] *See CAF Order* at ¶¶ 739, 821, 1297.

> the requirement that all bill-and-keep arrangements in effect on December 29, 2011 shall remain in place.[27]

Where, as here, the parties have already been operating under bill and keep for transport elements, there is no need for any transition plan; rates are already set at zero.

CenturyLink EQ relies heavily on the *Charter Arbitration* decision, asserting that it "believes that this precedent holds true under current FCC rules."[28] Beyond its legally incorrect claim that dedicated transport is somehow excluded from the *CAF Order*, CenturyLink EQ makes no real effort to explain how it can, consistent with the *CAF Order*, begin charging for transport that it does not presently charge for. HTI and CenturyLink EQ have operated for many years using bill and keep as their method of reciprocal compensation for both transport and termination. The *CAF Order* dictates that the current bill and keep arrangement remain in place. The interconnection language proposed by HTI, which provides that each party will continue to bear its costs of transport on its side of the POI is fully consistent with the FCC's *CAF Order*.

[27] Initial Post Hearing Brief of the Department of Commerce, p. 18 (italics in original).
[28] Post Hearing Brief of Embarq Minnesota, p. 11.

B. HTI's Proposed Language Will Not Impose Any Undue Costs on CenturyLink EQ

CenturyLink EQ argues that "HTI should not also have the right to saddle CenturyLink EQ with such inequitable transport costs."[29] CenturyLink EQ further contends those HTI "should bear the costs of an expensive (i.e., non-standard) interconnection."[30] First, the FCC has determined in fact, that it is **not** inequitable to require each party to bear the costs of transport and termination on its side of the POI. Indeed, this is the desired result from a policy perspective. Second, as has already been discussed, HTI is only advocating to continue the reciprocal compensation arrangement that has been in place between the parties for many years. Certainly if CenturyLink EQ believed that this arrangement reflected an unfair appointment of costs, it would have done something about it before now.[31]

Third, there is not one shred of evidence that HTI's reciprocal compensation proposal will impose any undue costs on CenturyLink EQ. As the Department noted, "If CenturyLink believed the cost differential to be of economic significance, it could have provided such evidence in the record, but it did not."[32] The burden is on CenturyLink EQ to prove its claim that HTI is seeking "expensive interconnection" with evidence and not just bald assertions. The only evidence regarding costs, however, shows exactly the opposite. With regard to HTI's request for interconnection at the

[29] Post Hearing Brief of Embarq Minnesota, p. 12.
[30] Post Hearing Brief of Embarq Minnesota, p. 13.
[31] *See* Initial Post Hearing Brief of the Department of Commerce, p. 14 ("The Department recommends that the Commission find it reasonable for CenturyLink EQ to build and maintain its network to the meet point interconnection as requested by HTI, and to be responsible for transport costs on its side of the point of interconnection, just as the parties and their affiliates have done since the 1990s.")
[32] Initial Post Hearing Brief of the Department of Commerce, p. 14.

Glencoe remote, the evidence shows that there is ample capacity in place between Glencoe and the Osseo host switch.[33] CenturyLink EQ would not be required to construct new facilities and will not incur any incremental costs.[34] There is no evidentiary basis to support a conclusion that adopting HTI's proposed language will impose any undue costs on CenturyLink EQ.

III. CenturyLink EQ's Proposed BFR Process is Overly Broad and Will Impose Unnecessary Costs and Delay

CenturyLink EQ claims that the purpose of its proposed BFR process is to assess the feasibility of providing a nonstandard form of interconnection.[35] "Feasibility," as CenturyLink EQ uses this term, however, is not limited to technical feasibility and includes what CenturyLink EQ refers to as "economic feasibility."[36] Thus, CenturyLink EQ takes the position that the BFR process applies to an interconnection request that is **substantially similar** to an existing interconnection arrangement, for technical feasibility is, as a matter of law, presumed.[37] In fact, CenturyLink EQ's BFR process has nothing to do with feasibility and everything to do with imposing additional and unnecessary costs on the CLEC.

The evidence in this case demonstrates how CenturyLink EQ intends to use its BFR process to limit the interconnection options available to HTI, based not on technical feasibility but on cost. Here, CenturyLink EQ used its BFR process as a basis for denying HTI's request to interconnect at the Glencoe remote switch – an

[33] Hearing Transcript (Easton), p. 61, line 24 – p. 62, line 7; Hearing Ex. 103.
[34] Hearing Ex. 102 (Burns Public Rebuttal), p. 11, lines 8-19.
[35] Hearing Ex. 1 (Easton Direct) p. 27, lines 1-4.
[36] Hearing Transcript, p. 92, line 16 – p. 93, line 4.
[37] Hearing Transcript, p. 94, line 15 – p. 96, line 14.

interconnection arrangement that CenturyLink EQ already has with another carrier – and proposing, instead, a more costly alternative of interconnecting at the Osseo host. CenturyLink EQ's denial of HTI's interconnection request is not based on technical infeasibility, but on CenturyLink EQ's assertion that HTI's request is "nonstandard." To that end, CenturyLink EQ contends that, "HTI cannot argue that there is widespread industry need/demand for the interconnection options that it seeks, nor has HTI suggested that other ILECs offer a wider set of standard interconnection options."[38] This is not the appropriate legal test. There is nothing in the Telecommunications Act that says that a CLEC's interconnection options may be appropriately limited by "widespread industry need/demand." To the contrary, the Telecommunications Act and its implementing regulations make it abundantly clear that a CLEC is entitled to an interconnection agreement that best meets its specific needs. As the Department of Commerce has observed, "CenturyLink's statement that it has not 'productized' substantially identical and admittedly technically feasible interconnection arrangements used since the 1990s is not a reasonable basis to impose on HTI costs of a BFR process to establish technical feasibility."[39]

IV. CenturyLink EQ's Failure to Negotiate In Good Faith

In his opening testimony, Mr. Burns explained the ways in which CenturyLink EQ had failed to negotiate in good faith, causing HTI to suffer unnecessary delay and expense. CenturyLink EQ suggests that what HTI is complaining about is nothing more

[38] Post Hearing Brief of Embarq Minnesota, p. 20.
[39] Initial Post Hearing Brief of the Department of Commerce, p. 9.

than an ordinary failure to come to agreement.[40] Although HTI does not seek a specific finding in this case that CenturyLink EQ negotiated in bad faith, it does wish to put this issue in context.

As HTI's opening brief and the foregoing discussion make clear, CenturyLink EQ's positions on all of the major issues lack any colorable legal support. Indeed, those positions are consistently contrary to the clear requirements of the Telecommunications Act. The key points of dispute do not turn on gray areas in the law. The CLEC's right to interconnect at any technically feasible point, the CLEC's right to meet point interconnection, the *CAF Order's* prohibition on any increase in reciprocal compensation rates are all well-established. Nor do they turn on disputed or complicated facts.

Essentially, once the parties reached an impasse with regard to the issue of the POI location, negotiations ground to a halt and very few issues were resolved until well into this proceeding. CenturyLink's scorched earth tactics have driven HTI's costs to arbitrate up and should not be condoned. Many, if not most of the items on the initial arbitration list concern matters which should not have been contentious. Indeed, much of CenturyLink's effort appears to be directed toward re-opening issues that have been resolved between the parties for years. This arbitration proceeding was necessary only because of CenturyLink EQ's stubborn refusal to acknowledge its clear legal obligations.

[40] Post Hearing Brief of Embarq Minnesota, p. 25.

V. Miscellaneous Issues

In additional to the key disputed issues relating to meet point interconnection and reciprocal compensation, there are a number of miscellaneous issues remaining in dispute. HTI believes that it has adequately addressed CenturyLink EQ's arguments regarding these issues in its opening brief. Rather than unnecessarily repeating that discussion, HTI refers to its opening brief as follows:

A. Financial responsibility for indirect interconnection (Issue 46), see HTI's Opening Brief at pp. 43-44.

B. Trunk forecasting (Issues 59-61), see HTI's Opening Brief at pp. 47-48.

C. Transit Traffic (Issues 64-67), see HTI's Opening Brief at pp. 48-51.

D. Billing Records (Issue 67.1), see HTI's Opening Brief at pp. 41-42.

E. Definition of "End User" (Issue 1), see HTI's Opening Brief at pp. 38-40.

F. Treatment of Toll VOIP-PSTN Traffic (Issues 14, 18, 36), see HTI's Opening Brief at pp. 40-42.

G. Separate Trunk Groups for Toll and Local Traffic (Issue 54), see HTI's Opening Brief at pp. 45-46.

H. Conversion of One Way Trunks (Issue 57), see HTI's Opening Brief at pp. 45-46.

CONCLUSION

For the foregoing reasons, HTI respectfully requests that is proposed interconnection agreement language be adopted in its entirety.

Dated: November 12, 2014

GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.

By: /s/Gregory R. Merz

Gregory R. Merz

500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 632-3257
Facsimile: (612) 632-4257
Gregory.merz@gpmlaw.com

GP:3815126 v1